(1) (8)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

W.P. NO. 1658 /2006

PETITIONER :

1. Managing Director,
Bharat Aluminum Company
Limited (BALCO),
Balco Nagar, Korba,
District Korba, Chhattisgarh

P.R. No. 17351/2 Presented by Shri G.Shyam Rao dated 30/3/06

2. Factory Manager Fabrication,SRS
Bharat Aluminium Company Ltd
Korba ,District Korba.

VERSUS

RESPONDENTS :

1. Inspector under the
Chhattisgarh Industrial Employment
(Standing Order) Act, 1961, Korba, District
Korba, Chhattisgarh

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2. Shri M.S. chouhan (wrongly mention in order as MOS Chouhan)
Technical officer
Employment no.7433
Bharat Aluminium Company Ltd.
Balco Nagar, Korba, District
Korba,Chhattisgarh.

3. Bharat Aluminum Mazdoor Sangh (INTUC),
Through: Its General Secretary, Balco Nagar,
Korba, District Korba, Chhattisgarh

4. State of Chhattisgarh,
Through: The Secretary,
Government of Chhattisgarh,
Department of Labour,
D.K.S. Bhawan, Mantralaya,
Raipur, Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITION OF INDIA

The petitioner named above most humbly and respectfully begs to submit as under:-

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

(51)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1595 of 2006.

W. P. No. 1658 of 2006.

W. P. No. 1669 of 2006.

W. P. No. 1683 of 2006.

W. P. No. 1684 of 2006.

W. P. No. 1685 of 2006.

W. P. No. 1686 of 2006.

W. P. No. 1690 of 2006.

O R D E R

Post for 9 -01-2007

Sd/-
Satish K. Agnihotri
Judge

(90)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1595 of 2006.

Petitioner	Managing Director, Bharat Aluminum Company Limited (BALCO).
	Versus
Respondents	Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri N.S. Kale, Senior Advocate with Shri Abhishek Sinha, Advocate for the petitioner.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents/ State/ respondents No. 1 & 4.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate, for respondents No. 2 & 3.

W. P. No. 1658 of 2006.

Petitioners	Managing Director, Bharat Aluminum Company Limited (BALCO) and another.
	Versus
Respondents	Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 4/ State.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for respondents No. 2 & 3.

W. P. No. 1669 of 2006.

Petitioner	Managing Director, Bharat Aluminum Company Limited (BALCO).

(41)

Versus

Respondents Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioner.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 4/State.

Shri Rajeev Shrivastava, Advocate for respondent No.3.

W. P. No. 1683 of 2006.

Petitioners Managing Director, Bharat Aluminum Company Limited (BALCO) and another.

Versus

Respondents Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 10/State.

Shri P. Diwakar, Sr. Advocate with Shri P.R. Patankar, Advocate for respondents No. 2 to 8.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for respondent No.9.

W. P. No. 1684 of 2006.

Petitioners Managing Director, Bharat Aluminum Company Limited (BALCO) and another.

Versus

Respondents Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

(42)

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 5/ State.

Smt. Hameeda Siddique, Advocate for resp. No. 2 & 3.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for respondent No. 4.

W. P. No. 1685 of 2006.

Petitioners	Managing Director, Bharat Aluminum Company Limited (BALCO) and another.
	Versus
Respondents	Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 15/State.

Shri Sanjay K. Agrawal with Shri Saurabh Sharma, Advocates for respondents No. 3,4,6,7 & 8.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for respondent No. 14.

W. P. No. 1686 of 2006.

Petitioners	Managing Director, Bharat Aluminum Company Limited (BALCO) and another.
	Versus
Respondents	Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No. 1 & 8/State.

Shri Ashish Shrivastava and Shri Akhilesh Dalpati, Advocates for respondents No. 2,3 & 5.

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Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for respondent No. 7.

W. P. No. 1690 of 2006.

Petitioners	Managing Director, Bharat Aluminum Company Limited (BALCO) and another.
	Versus
Respondents	Inspector under the Chhattisgarh Industrial Employment (Standing Order) Act, 1961, Korba & others.

Present : Shri Abhishek Sinha, Advocate for the petitioners.

Shri V.V.S. Murthy, Dy. Advocate General, for respondents No 1 & 10/State.

Dr. N.K. Shukla, Sr. Advocate with Shri Rajeev Shrivastava, Shri Shailendra Shukla, Advocates for respondents No. 3,5,7,8 & 9.

ORDER

(Passed on 9th January, 2007)

All these writ petitions are directed against the orders passed by the Inspector, Chhattisgarh Industrial Employment (Standing Orders) Act, 1961 (for short "***the Act,1961***") and Assistant Labour Commissioner, Korba exercising powers under sub-Section (2) of Section 15 of the Act, held that the respondents (the applicants therein) are employees within the meaning of Section 3(d) of the Act,1961 read with Section 2(13) of the Chhattisgarh Industrial Relations Act,1960 being governed by the Standing Orders of the Company. The petitioner- Company was further directed not to superannuate the respondents – employees at the age of 58 years and allow them to continue till they attain the age of 60 years as per Rule 5(d) of the Standing Orders of the petitioner – Company. Since the facts of the cases and the legal question that arises for decision-

making are similar in all these writ petitions, they are clubbed, heard together and being disposed of by this common order.

(2). For the purpose of disposing of this batch of writ petitions, the facts of Writ Petition No. 1595 of 2006 are being dealt with, which are as follows: -

The respondent No.2 was working with the petitioner – Company since 1973. He was upgraded to the post of Assistant Technical Officer vide order dated 15-07-2003 (Annexure-P/1). The order dated 15-07-2003 (Annexure-P/1) states that respondent No.2 (employee) would be governed by the terms and conditions of service as applicable to the Officers in the Company. The said order further states that respondent No.2 would be assigned higher responsibilities which would be in addition to his present responsibilities. The order of up-gradation was accepted by respondent No.2 without any protest and he was availing all the perks, privileges and facilities applicable to the Officers of the petitioner – Company. As the age of superannuation of Officers of the petitioner – Company is 58 years, the petitioner – Company issued a notice dated 15-11-2005 (Annexure-P/2) informing respondent No.2 that he would be retiring on 31st January, 2006 on attaining the age of superannuation. Thereafter, on 07-01-2006 respondent No.2 accepting the aforesaid notice, moved an application for payment of gratuity and provident fund. Pursuant to which, the petitioner – Company paid the amount to him. However, respondent No.2 made a complaint vide Annexure-P/3 before respondent No.1- Inspector under the Act, 1961 claiming that he falls under the category of employee (workman) and the Standing Order of the Company applies to him even after his up-gradation, as such he cannot be retired at the age of 58 years, and he should be retired on completion of

(45)

the age of 60 years. During the pendency of the said complaint, respondent No.2 filed a writ petition before this Court bearing W.P. No.513 of 2006 praying to retire him on completion of the age of 60 years. The said petition was dismissed as withdrawn on 31-01-2006 vide Annexure-P/6. Vide letter dated 11-02-2006 (Annexure-P/7), the petitioner – Company informed the Inspector- respondent No.1 about the dismissal of the writ petition filed by respondent No.2 before the High Court.

(3). Shri N.S. Kale, learned Sr. Counsel assisted by Shri Abhishek Sinha, learned counsel appearing for the petitioner- Company would submit that the impugned order has been passed without any judicial and specific power of adjudication under Sections 13 and 17 of the Act which is *prima facie* void, without jurisdiction and without authority of law. It was further contended that respondent No.2 has accepted the order of up-gradation without any protest and he had availed all the perks, privileges and facilities applicable to an Officer of the petitioner – Company. Learned counsel would also submit that Assistant Technical Officers are not governed by the Standing Orders, therefore, it gives rise to the question of applicability of the Standing Orders and the question regarding applicability and interpretation of the Standing Orders can be decided by the Labour Court as per the provisions of Section 13 of the Act,1961 and no other authority has power to decide the question of applicability of the Standing Orders. Thus, the impugned order of respondent No.1 was without jurisdiction. Further submission of the learned counsel was that reading of Sections 13, 15 and 17 of the Act, 1961 makes it clear that the power of the Inspector is to ensure implementation of the provisions of the Act, 1961, after collecting information by way of enquiry. In case of any dispute with regard to the

applicability and interpretation of a Standing Order, the Labour Court having the jurisdiction alone is competent to decide the question and its decision shall be final and binding on the parties.

(4). *Per contra*, learned counsel appearing for the respondents – employees and respondent – Union would submit that the power to decide the question of applicability and interpretation of the Standing Orders is incidental to the power conferred under Section 15 of the Act, 1961. The Inspector while exercising his power under Section 15 of the Act, 1961 is to ensure compliance of the provisions of the Act, 1961 and is competent to go into the question as to whether the respondent – employee was a Supervisor or a workman and further whether the age of retirement of the employee is 58 years or 60 years. Learned counsel would further contend that the Act, 1961 is a "beneficial legislation" and the same has been enacted to protect the interest of the employees and to prevent the employer from playing any mischief with the employees. The Inspector has passed the impugned order after making proper enquiry with regard to the nature of the work and the status of the employee concerned. Accordingly, the Inspector came to the conclusion that Rule 5(d) of the Standing Orders for Workmen of the Company provides for superannuation of an employee on attaining the age of 60 years and the respondents – employees are entitled to the said benefit of retirement.

(5). I have heard learned counsel appearing for the parties and perused the pleadings and records appended thereto.

(6). For proper adjudication of the dispute involved in this batch of writ petitions, it is useful to quote the relevant provisions as under :

(47)

Sections 3 (d), 13, 15 and 17 (2) (3) and (5) of the Act,1961 are relevant which read thus :

> "**3. Definitions** – In this Act, unless the context otherwise requires,-
>
> (a) xxxxxxxxxx
>
> (b) xxxxxxxxxx
>
> (c) xxxxxxxxxx
>
> (d) the words and expressions used in the Act but not defined herein shall have the meaning assigned to them in Chhattisgarh Industrial Relations Act, 1960 (27 of 1960).
>
> **13. Disputes regarding application and interpretation of standing orders** – If any question arises as to the application or interpretation of a standing order, an employer, an employee or a representative of employees may refer the question to the Labour Court having jurisdiction and the Court shall, after giving the parties an opportunity of being heard, decide the question and his decision shall be final and binding on the parties.
>
> **15. Appointment of Inspectors and their powers and duties-** (1) The State Government may, by notification, appoint such officers of the Labour Department not below the rank of a Deputy Labour Officer, as it may think fit, to be Inspectors for the purposes of this Act. Such notification shall define the class of undertakings in respect of which and the areas within which they shall exercise their respective jurisdictions.
>
> (2) It shall be the duty of every such Inspector to ensure within the area of his jurisdiction the proper

implementation of the provisions of this Act and the rules made thereunder.

(3) An Inspector may, within the area of his jurisdiction make such inquiries and collect such information from the employers and the employees as he may consider necessary for the purposes of this Act.

17. Penalties and procedure. - xxxxx

(2) Any employer who does any act in contravention of standing orders shall be punished with fine which may extend to one hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) Whoever contravenes the provisions of this Act or of any rule made thereunder, in cases other than those falling under sub-section (2), shall be punished-

(a) with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees; and

(b) in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

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(5) An offence punishable under this section shall, on a complaint made by the representative of the employees or the Inspector appointed under this Act, be triable by a Labour Court within the local limits of whose jurisdiction it was committed. "

(49)

Section 2 (13) of the C.G. Industrial Relations Act, 1960 is also relevant which reads thus :

> "**2. Definitions-** In this Act, unless the context otherwise requires, -
>
> xxxxxxxxxx
>
> (13) "Employee" means any person employed in any industry to do any skilled, unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and includes-
>
> (a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause 14; and
>
> (b) an apprentice other than an apprentice under sub-clause (v); but does not include any person-
>
> (i) who subject to the Army Act, 1950 (XLVI of 1950), or the Air Force Act, 1950 (XLV of 1950), or Navy Discipline Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the Police Service or as an Officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial capacity; or
>
> [1][(iv) who being employed in a supervisory capacity draws wages exceeding one thousand and six hundred rupees per mensem; or]
>
> (v) who is a craftsman or an apprentice working under a scheme approved by the State Government on the condition that such craftsman or apprentice

(50)

shall not be deemed to be an employee under this Act;

Explanation. – An employee who has been dismissed, discharged or retrenched from the employment or whose employment has been otherwise terminated shall, in respect of matters relating to such dismissal, discharge, retrenchment or termination, be deemed to be an employee for the purpose of this Act;"

(7). Section 5 (d) of the Standing Orders for Workmen of the BALCO referred and relied on by the petitioner –Company is for workmen wherein workman has been defined as any employee of the Company who is covered by the definition of Section 2(1) of the Standing Order for Workmen of the BALCO, Korba certified under Industrial Employment (Standing Orders) Acts, 1946 (for short "***the Act, 1946)***. Sections 2(1) 2(7) and 5(d) of the Standing Orders for Workmen of the BALCO provide thus :

"2. Definitions :

In these orders, unless there is anything repugnant to the subject or context :-

(1) "Act" means the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946).

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(7) "Workman" means any employee of the company who is covered by the definition of "Workman" in Section 2 (1) of the Act.

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5. Record of Age.

(51)

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(d) Every employee shall be relieved from services of the company in the afternoon of the last day of the month in which he or she attains the age of 60 (Sixty) years. There shall be no extension of service beyond the age of superannuation i.e. 60 (sixty) years. "

(8). The workman under the Act 1946 has the same meaning as assigned to him in sub-Section (s) of Section 2 of the Industrial Disputes Act, 1947, which reads thus :

"(2). Definitions. – In this Act, unless there is anything repugnant in the subject or context, --

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(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(52)

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

(9). The dispute involved in this batch of cases is that whether the Standing Order which is meant for Workmen is applicable to respondents-employees who were appointed as workmen and thereafter upgraded to the post of Technical Officer, Assistant Technical Officer etc.. (Supervisory capacity). In W.P. No.1595 of 2006, respondent No.2 was upgraded to the post of Assistant Technical Officer in the month of July,2003 ; in W.P. No.1658 of 2006, respondent No.2 was upgraded to the post of Technical Officer in the month of January,2003 ; in W.P. No.1669 of 2006, respondent No.2 was upgraded to the post of Assistant Technical Officer in the month of May, 2000 ; in W.P. No.1683 of 2006, respondents No.2 to 5, 7 and 8 were upgraded to the post of Assistant Technical Officer in the year 2003, whereas respondent No.6 was upgraded to the post of Assistant Technical Officer in the year 1998 ; in W.P. No. 1684 of 2006, respondents No. 2 and 3 were upgraded to the post of Assistant Technical Officer in the month of January, 2003 ; in W.P. No. 1685 of 2006, respondents No.2 to 7, 10, 11 and 12 were upgraded to the post of Assistant Technical Officer in the year 2000, respondent No.8 was upgraded to the post of Assistant Technical Officer in the year 2003, respondent No.9 was upgraded to the post of Technical Officer in the year 1993 and respondent No.13 was upgraded to the post of Assistant

53

Technical Officer in the year 2002 ; in W.P. No. 1686 of 2006, respondents No. 2 to 4 were upgraded to the post of Assistant Technical Officer in the year 2003, respondent No.5 was upgraded to the post of Assistant Technical Office in the year 2000 and respondent No.6 was upgraded to the post of Sr. Assistant Technical Officer in the year 2000 ; in W.P. No.1690 of 2006, respondents No. 2 to 5 were upgraded to the post of Assistant Technical Officer, respondent No.6 was upgraded to the post of Assistant Foreman; respondent No.7 was upgraded to the post of Senior Technical Officer and respondent No.8 was upgraded to the post of Technical Officer on various dates. The main contention of the petitioner – Company is that the respondents – employees are employed in a supervisory capacity and they have been enjoying the perks, privileges and facilities of Officer and are governed by different set of service regulations. The respondents – employees have accepted the up-gradation orders and thereafter accepted the age of retirement i.e. 58 years which is prescribed for Officers in supervisory capacity. The Standing Orders for Workmen of the Company provides age of retirement under Section 5(d) for workman i.e. 60 years. The Inspector who is authorised to see the proper implementation of the Standing Order of the Company meant for workman under the provisions of Section 15 of the Act, 1961 is barred from deciding the dispute with regard to the application and interpretation of such Standing Order. A bare reading of Section 13 of the Act,1961 makes it clear that if any question arises as to the application or interpretation of a standing order, an employer, an employee or a representative of employees may refer the question to the Labour Court having jurisdiction and the Court shall, after giving the parties an opportunity of being heard, decide the question and his decision shall be final and binding on the parties. Reference to Section 17 of the Act, 1961

(54)

which provides for penalties and procedure is irrelevant in the present case as Section 17 provides for penalties and procedure in case of the provisions of the standing order are not complied with. It follows from the above stated provisions and discussions that the dispute involved in the present batch of writ petitions is as to whether the Standing Order for Workmen would be applicable to the respondents- employees under the provisions of Section 13 of the Act, 1961. Thus, the Inspector has no jurisdiction to decide the said issue in exercise of his power under the provisions of Section 15 of the Act, 1961.

(10). High Court of Gujarat in **Tata Chemicals Ltd. and others vs. Kailash C. Adhvaryu** [1], speaking through Shri P.N. Bhagwati, J., as His Lordship then was, held that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by the statute alone must be followed.

(11). In the matter of **Glaxo Laboratories (I) Ltd. vs. Presiding Officer, Labour Court, and others**[2] the Supreme Court observed as under :

> "The scheme of Act would show that the certified Standing Orders have more or less a statutory flavour. If that be so, ordinary canons of construction of a statute would be attracted where a dispute arises about the construction or interpretation of a certified Standing Order."

(12). It is well settled canon of statutory construction that it is the duty of the Court to further Legislature's aim of providing a remedy for the mischief against which the enactment is directed and the Court should prefer a construction which advances this object rather than one which

55

attempts to find some way of circumventing it (see **Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another** [3]).

(13). In the present case, there is a specific provision for adjudication of the applicability and interpretation of the Standing Order. In that event, the inherent power of the authority to use all reasonable means to make such enactment effective is not applicable. This principle would be applicable only in the case when there is no specific provision. Thus, reliance of learned counsel for the respondents in the decisions of **Reserve Bank of India & others vs. Peerless General Finance and Investment Company Ltd. and another** *(Supra 3)*; **J.K. Synthetics Ltd. Vs. Collector of Central Excise** [4]; **Union of India and another Vs. Paras Laminates (p) Ltd.** [5] ; **M/s Cochin Shipping Co. vs. E.S.I. Corporation** [6] ; **Khargram Panchayat Samiti and another Vs. State of West Bengal and others** [7] are not applicable to the facts of the present case.

(14). From the above facts and provisions of law, it clearly follows that the Standing Order, which was to be enforced by the Inspector, was meant for workman and according to the petitioner – company, respondents – employees are not workmen and they have been upgraded to the supervisory capacity, which is excluded from the definition of workman. Thus, there was a clear dispute with regard to the applicability and interpretation of the Standing Order. The Inspector – respondent No.1 has directed retirement of the respondents – employees on attaining the age of 60 years in view of Section 5(d) of the Standing Orders for Workmen of the Company certified under the Act, 1946. Hence, the impugned order is without authority, unjust and it is accordingly set aside.

(56)

(15). As a result, the writ petitions are allowed. However, respondents – employees are at liberty to approach the appropriate forum for adjudication of their status and applicability of Standing Order in dispute to them. The observations made hereinabove shall not come in the way of the appropriate forum in adjudicating the dispute with regard to applicability and interpretation of the Standing Order to the respondents – employees. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. AIR 1964 Gujarat 265 ;
2. AIR 1984 SC 505 ;
3. (1996) 1 SCC – 642 ;
4. (1996) 6 SCC – 92 ;
5. (1990) 4 SCC – 453 ;
6. (1992) 4 SCC – 245 ;
7. (1987) 3 SCC – 82 ;

Subbu